

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TIMOTHY HUCKABY

APPELLANT,

v.

DIVISION OF EMPLOYMENT SECURITY

RESPONDENT.

DOCKET NUMBER WD73617

DATE: December 6, 2011

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, James M. Smart, Jr., Judge and Gary D. Witt, Judge

Attorneys:

Timothy Huckaby, Appellant Pro Se.

Robert A. Bedell and Subrina Bennett, supervised by Jeannie Mitchell, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD73617

Labor and Industrial Relations Commission

Before Division Three: Karen King Mitchell, Presiding Judge, James M. Smart, Jr., Judge and Gary D. Witt, Judge

Timothy Huckaby appeals the decision of the Labor and Industrial Relations Commission (“Commission”) dismissing his unemployment benefits appeal because his “Application for Review” was not timely filed.

Huckaby filed a claim for unemployment compensation with the Division of Employment Security (“Division”). When his claim was denied, Huckaby filed an Application for Review before the Commission in an untimely fashion. The Commission issued its order stating that the “Application for Review is dismissed pursuant to Section 288.200 RSMo, because it was neither postmarked nor received within thirty (30) days after the Appeals Tribunal Decision was mailed.” Specifically, the Appeals Tribunal mailed its Order to Huckaby on August 6, 2010, but he did not file his appeal before the Commission until January 7, 2011.

AFFIRMED.

Division Three holds:

In Point One, Huckaby argues that the “Commission erred in denying Appellant unemployment benefits because it’s decision misapplies the law and is unsupported by evidence which showed that appellant had very good cause, and just cause, or genuine reason for being late on filing timely appeals for unemployment rather than (sic) having no cause and just cause at all.” The issue before the Commission was the timeliness of Huckaby’s appeal from the Appeals Tribunal to the Commission; accordingly, that is the issue this Court will address.

Here, Huckaby does not dispute the findings and conclusions of the Commission that his appeal from the Appeals Tribunal to the Commission was not timely filed. Indeed, it is beyond dispute that under section 288.200.1, “[a]ny of the parties (including the division) to any decision of an appeals tribunal, may file with the commission within *thirty days* following the date of notification or mailing of such decision, an application to have such decision reviewed by the commission.” *Id.* (Emphasis added.) Section 288.200 does not provide for late filing and does not recognize any exceptions for filing out of time.

Because Huckaby waited over five months after the Appeals Tribunal Order was mailed to him before filing his appeal to the Commission, we conclude that the Commission did not err in concluding his appeal was not timely filed. Point One is denied.

In Point Two, Huckaby addresses the merits of why his unemployment benefits claim was improperly denied based on his allegation that his conduct did not constitute misconduct. However, the law is clear that because the Commission did not reach the merits of this claim, this Court is precluded from reaching the merits as well. Point Two is denied.

The Commission's order is hereby affirmed.

Opinion by Gary D. Witt, Judge

December 6, 2011

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